IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 868 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHIVJI BHACHABHAI THAKKER

Appearance:

Ms. Hansa Punani, APP, for the appellant

MR CH Vora for Respondent No. 1, 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 05/02/2001

ORAL JUDGEMENT

1. In this appeal under Section 378 of the Code of Criminal Procedure, the State of Gujarat has challenged judgment and order dated February 11, 1991, passed by the learned Chief Judicial Magistrate, Kutch, at Bhuj, in Criminal Case No.838 of 1986, by which, the respondents

came to be acquitted for the offences punishable under Sections 7 and 16 of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The Food Inspector, M.C. Patel, of Bhuj Municipality, inspected the shop of respondent No.1, namely, Tulsi Provision Store, on November 29,1985 at 18.45 hrs. He was accompanied by panch, Mahendrakumar Swaroopchand Mehta. The complainant, M.C. Patel, collected groundnut oil of 375 gram from the shop of respondent No.1 in one steel jug. The said sample of ground nut oil was filled in clean and dry glass bottle and, after following the usual procedure, the said bottle was sealed under a panchanama. The said sample bottle containing ground-nut oil was sent to the public analyst. The report of the public analyst indicated that the said sample of ground-nut oil did not conform to the standard prescribed under the Act. After obtaining the sanction under Section 20 of the Act, the Food Inspector lodged a complaint against the respondents under Sections 7 and 16 of the Act in the Court of the learned Chief Judicial Magistrate, Bhuj, at Kutch, which came to be numbered as Criminal Case No.838 of 1986.

3. The respondent filed an application before the Court to send the sample of ground nut oil to the Central Food Laboratory for analysis. Accordingly, the Court had sent the sample bottle containing ground nut oil to the Central Food Laboratory and the report of the the Central Food Laboratory also indicated that the ground nut oil did not conform to the standard prescribed under the Act. The complainant and Food Inspector, M.C. Patel, was examined at Exh.19. After examining the complainant, charge Ex.37 came to be framed against the respondents for the offences punishable under Sections 7 and 16 of the Act. The respondents pleaded not guilty and claimed to be tried. After framing of the charge, panch, Mahendrakumar Swaroopchand Mehta, was examined at Exh.45. The prosecution produced voluminous documentary evidence consisting of the complaint, report of the Central Food Laboratory, registered A.D. slips sent to the respondent along with the report of the public analyst, panchanama of seizure of samples of ground-nut oil,etc. to prove the charges against the respondent.

4. The learned Chief Judicial Magistrate, on appreciation of oral and documentary evidence, acquitted the respondents mainly on the ground that the sanction obtained under Section 20 of the Act was not valid and the respondents were liable to be acquitted.

5. The State of Gujarat has challenged the order of acquittal recorded by the learned Chief Judicial Magistrate, First Class, Bhuj, at Kutch, by filing this appeal.

6. Learned Additional Public Prosecutor, Ms. Hansa Punani, and learned advocate, Mr. C.H. Vora, for the respondents, have taken me through the entire record and proceedings.

7. The learned Additional Public Prosecutor has submitted that the question of the sanction being defective has now been settled by the Supreme Court in the case of Suresh H. Rajpur & others vs. Bhartiben Pravinbhai Soni & others, reported in (1996) 7 Supreme Court Cases p.199. The learned advocate for the respondents does not dispute this legal position and, therefore, the finding of the learned Chief Judicial Magistrate that there was no valid sanction deserves to be quashed and set aside.

8. However, the learned advocate for the respondents has submitted that there was clear breach of Rule 13(2) read with Rule 4(1)(a) of the Prevention of Food Adulteration Rules, 1955 ('Rules' for short), as the Court had not sent the memorandum of seal affixed on the sample, which was sent to the Central Food Laboratory by a letter. The learned advocate for the respondents has placed reliance on the decision of this Court in the case of State of Gujarat vs. Bhupendra . Mehta, reported in 1999 (1) G.L.h.227. The learned advocate for the respondents invited my attention to the report of the Central Food Laboratory which indicated that the memorandum and specimen impression of the seal was sent separately. It may be mentioned that, in the trial court, no evidence was led that the impression of seal was sent separately to the Central Food Laboratory. In view of the decision of this Court in the case of Bhupendra M.Mehta (supra), as there was breach of mandatory provision of Rule 13(2) read with Rule 4(1)(a) of the Rules, the prosecution case is liable to fail.

9. The learned advocate for the respondents has also vehemently submitted that there was breach of Rules 17 and 18 of the Rules inasmuch as the Food Inspector had not sent memorandum and specimen impression of the seal separately to the Public Analyst. In this connection, the learned advocate for the respondents has taken me through the deposition of the complainant and the record and proceedings produced at the trial. From the deposition of the complainant and the record and

proceedings, it becomes evident that the Food Inspector had not followed the mandatory requirements of Rules 17 and 18 of the Rules. Rules 17 and 18 have been held to be mandatory in the decision of the Apex Court in the case of State of Maharashtra vs. Rajkaran, reported in 1987 (Supp) Supreme Court Cases p.183. As there was breach of Rules 17 and 18 of the Rules, in my view, the respondents are entitled to acquittal.

10. The learned advocate for the respondents has also submitted that Rule 14 of the Rules, which is held to be mandatory as per the decision of this Court, was also not followed and, therefore, the prosecution case is liable to fail on that ground also. In support of the above submission, the learned advocate for the respondents placed reliance on the decisions of this Court (i) in the case of Gangadhar Yashvant Ramekar vs. Mukeshbhai B. Shah and others, reported in 1999(2) GLR p.1105 and (ii) in the case Bhupendra M.Mehta (supra) The learned advocate for the respondents has taken me through the evidence of the complainant, M.C. Patel, which clearly indicates that no precautions were taken before filling ground-nut oil sample in the glass bottles. The complainant had not cleaned the bottles and had not ascertained whether the bottles were dried before filling ground-nut oil in them. The panchanama of seizure also did not specify that the mandatory provision of Rule 14 of the Rules was strictly followed. In view of the above, it is amply clear that, because of the sampling procedure was not properly followed, the prosecution case is liable to fail.

11. As a result of foregoing discussion, the appeal fails and is dismissed. The order of acquittal dated February 11, 1991, passed by the learned Chief Judicial Magistrate, Kutch, at Bhuj, in Criminal Case No.838 of 1986, is confirmed. The muddamal be destroyed as per the order of the trial court.

February 5, 2001 (M.H.Kadri, J.)
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